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Daniel Lee
Assistant U.S. Trade Representative for Innovation and Intellectual Property
Office of the United States Trade Representative
600 17th St., N.W.
Washington, D.C. 20508

Re: 2022 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, 86 Fed. Reg. 52609, pp. 52609-52611 (August 26, 2022)

Dear Mr. Lee,

We are writing to respond to the above-referenced Federal Register Notice inviting comments on online and physical notorious markets that exist outside the United States. As the U.S. association that represents companies that publish interactive games for video game consoles, handheld devices, personal computers, and the Internet, the Entertainment Software Association (ESA) regards the review of notorious markets as an important opportunity to shed light on markets that facilitate mass infringement or counterfeiting of industry products and services and that remain either sheltered from, or impervious to, the deterrent effects of enforcement actions.

Notorious Online Markets

Hyperlinking Websites (“Linking Sites” or “Link Sites”): These sites provide hyperlinks (“links”) to infringing copies of complete versions of copyright protected video games stored on third-party hosting sites known as “cyberlockers” (described below). The links are typically organized by content category (*i.e.*, “Games” sections) and/or are supported by a search functionality that enables visitors to find content. These sites typically generate revenue from user donations and/or online advertisements. The following link sites are notable due to their heavy traffic, high volume of infringing video game file links that are indexed, and non-responsiveness to rights holder notices.¹

oceanofgames.com (Global Rank: 20,252). This games-focused site’s popularity is global in nature, based on its high levels of traffic. In August 2022, oceanofgames.com made available over 5,523 links leading to unauthorized copies of ESA member titles, of which less than 3% were removed based on infringement notices sent. The site is still hosted by Velvety Network Solution by IntraVex in Ukraine.

¹ The figures that follow are based upon research conducted in September 2022 in anticipation of this filing.

nsw2u.in (Global Rank 35,153). This website indexes, manages, and organizes links to unauthorized copies of ESA member copyright protected content hosted on third-party platforms. In September 2021, the website offered over 8,000 posts with links to game downloads for the Nintendo Switch, including the most recent ESA member video game releases. To counter anti-piracy enforcement actions, the website utilizes multiple alternative domains including .xyz, .com and .org. The website also links to game-2u.com which makes available pirated games for the PlayStation, Xbox and PC platforms. The website does not respond to ESA take down notices and uses a U.S.-based content delivery network (“CDN”)² in addition to privacy registration services to conceal the identity of its owners and administrators.

darkbox.vip (Global Rank: 89,512). This website is a re-launch of a site submitted in 2021, darkw.pl. Although this site is exclusively presented in the Polish language, it links to a large volume of infringing content from multiple creative industries. In September 2022, darkbox.vip indexed over 2,400 new links to infringing copies of ESA member video game content. The site still employs the services of the U.S.-based CDN referenced above and requires an account to access this site, making it exist in a more closed, harder-to-detect environment.

Hosting Websites (“Cyberlockers”): Cyberlockers host the infringing content on cloud storage platforms and are accessible through links indexed on linking sites. Users visit linking sites to find content on cyberlockers because cyberlockers generally do not support native search functionality. The following sites are notable for the substantial volume of infringing game files that they host and the platforms’ limited response rates to notices of infringement.

1fichier.com (Global Rank: 1,712). This cyberlocker platform is a piracy haven for uploaders to disseminate unauthorized copies of the latest video game titles. 1fichier hosted over 1,561 unauthorized copies of copyright protected ESA member video game titles (as of September 2022) and has a 0.71% response rate to ESA’s take down notices. 1fichier’s extremely low compliance rate for the removal of infringing content attracts more unauthorized uploaders to the platform due to the fact that the content will remain active on the platform for longer periods of time. Linking websites that index and manage the links to content hosted on 1fichier also benefit from the platform’s low compliance rate as these websites derive greater advertising revenue from users clicking on the links to pirate content hosted on 1fichier.

The French based company operating the 1fichier.com website has been sentenced by both civil and criminal courts in France in two separate cases in 2021. The site was held civilly liable for refusing to remove unauthorized copies of games on its platform and ordered to pay approximately USD 1.1 million in compensation. 1fichier was also convicted in criminal court for multiple counts

² A content delivery network (also known as a content distribution network) (“CDN”) is a service that provides a system of proxy servers and data centers, often global in scope, for resiliency services and DDOS protection for websites. CDNs enter into service agreements with websites to effectively ensure that the content of those sites is always available and that site visitors enjoy an optimal user experience. Among other functions, CDNs cache copies of web pages to ensure the availability of site content in the event of web server malfunction. While CDNs are used by legitimate services, infringers may make specific use of these services both to hide true hosting information (*i.e.*, public registries reference only the CDN, and not the actual host cached by the CDN) and to speed the transmission of large files, such as infringing copies of video games. Approximately half of the websites referenced in this document have a business relationship with a single U.S.-based CDN. Therefore, it is important that all U.S.-based CDNs join ISPs, search engines, payment processors, and advertising services that have successfully collaborated with rights holders in recent years to develop reasonable, voluntary measures to prevent sites focused on copyright infringement from using their services.

of copyright infringement and also fined approximately USD 1.5 million. The site is appealing both decisions.

megaup.net (Global Rank: 6,461). This cyberlocker platform is hosted in Russia and its domain registration details are privacy protected since August 2015. Megaup has been gaining credit in the video game piracy community as a reliable host of infringing files and, therefore, its share in the cyberlocker market has noticeably increased. Megaup hosts hundreds of unauthorized copies of copyright protected video game titles (as of September 2022) and has a very poor compliance rate to removal notices, given the extremely long time that passes until only a small percentage of the notified links become eventually inactive. Linking websites that index and manage the links to content hosted on Megaup also benefit from the platform's low compliance rate as these websites derive more traffic, and thus more advertising revenue, due to the durability of the Megaup links.

Unauthorized Digital Goods

Unauthorized sales of in-game digital items have become a growing concern for the video game industry. Closely related to these in-game items are software products (collectively known as “cheat software”) that enable the unfair and rapid collection and aggregation of virtual goods, such as bots, hacks, and “cheats”, or which otherwise tilt the scales in favor of one player over another. The rise of Unauthorized Digital Goods (UDGs) and cheat software have a negative impact on video game companies and consumers in the following ways: (1) sales of digitally-delivered items, like in-game digital items, have the potential for consumer fraud (such as stolen payment methods or compromised accounts) and the facilitation of money laundering schemes; (2) the unchecked sales of cheat software can threaten the integrity of game play, alienating and frustrating legitimate players; and (3) video game publishers and developers are forced into a perpetual virtual “arms race” to update their products and security technology before the sellers can update theirs; and (4) sellers of unauthorized digital goods and cheat software divert revenue away from video game developers and publishers.

Cheats: The sites listed below provide “cheats”, which (using software code) are ways to modify the game in order to allow an advantage for the player. Examples of cheats include: aimbots (which help a player aim in a first-person action game); trainers (which allow a player to turn on or off features to make the game easier or more difficult); and one-button maneuvers that allow a player to complete a task in-game with a single click that normally would take extended gameplay (like “Instant Build,” “Always Run”). Cheats can infringe ESA member IP in instances where the cheat software code copies the underlying code of the game software. In addition, cheat software is specifically designed to defeat security codes measures meant to prevent unfair player advantages within the game. The sites referenced below generate revenue through sales transactions (where the site itself is the seller), but also through advertisements. The following sites are notable due to their global popularity and the number of cheats available to purchase.

unknowncheats.me (Global Rank: 5,266) This site has allowed a self-reported 4.1 million users (Up 20% since last year) to develop and submit cheats to this forum-based site since 2000. The site offers cheats and tutorials for 100+ titles as well as information and links to anti-cheat software and how to bypass their protocols. It does not charge for cheats, instead relying on advertisements to generate revenue. All cheats are created by the community and the site encourages an open, free, and collaborative environment to develop and distribute these illegal goods.

mpgh.net (Global Rank: 44,876). According to mpgh.net, the site offers “several hundred thousand” free cheats to over 4 million users, as well as tutorials and a marketplace where users can buy and sell cheats, accounts, and in-game items. The site generates revenue through

advertisements and the offering of premium accounts that bypasses restrictions found on free accounts, thereby making them attractive to sellers.

iwantcheats.net (Global Rank: 98,548). According to the site operator, over 1.1 million members can pay for premium access to the site's forum and download cheats for over 50 video game titles. The site focuses on cheats for first-person action games that help with aiming, as well as in-game information that normally is hidden, such as player names, distance, and location of items.

Unauthorized Online Marketplaces: These sites provide a platform for users to list and sell (depending on the site's focus) unauthorized digital items including in-game currency, in-game items, game accounts, and the unlicensed sale of potentially fraudulent game keys, which can provide access to features within a game or to the game itself. Each site organizes the listings by game and then usually by type of item. While some sites prefer an online market aesthetic, other sites use a forum to keep listings organized. Users can set their own price for the product they are selling and many have power sellers with high ratings and positive feedback. The owners of these sites generate revenue through transaction fees, advertisements, or the sale of their own currency, which users can then use to boost their profile. The following sites are notable due to their global popularity and the number of games available.

playerauctions.com (Global Rank: 11,760). This site provides a marketplace for users to sell in-game currency, digital items, digital cosmetic (skins), accounts, CD keys, and boosting³ for over 200 video game titles among over 2 million registered traders. The site charges transaction fees and purports to offer protection against fraudulent purchases. According to the website statistics firm, SemRush, playerauctions.com has an estimated 752,680 organic visits per month.

G2G.com (Global Alexa Rank: 9,321). Over 1 million members can access over 1 million listings that include in-game items, virtual currency, boosting, and digital accounts offered by other users of the site. The site charges a fee from 4.99% to 9.99% per successful transaction. According to Similar Web, the site had 3.5 million visits in its most recent month.

Notorious Physical Markets⁴

Mexico⁵

³ "Boosting" is a form of cheating whereby lower-skilled players will grant higher skilled players access to their accounts for the purpose of increasing their rank or obtaining difficult-to-acquire digital items..

⁴ In light of changing trends in the video game industry, including increased reliance on digital distribution models as well as the proliferation of online infringement more generally, physical markets are becoming less of an enforcement priority for ESA's membership.

⁵ ESA notes that a complicating factor in combatting mass infringement in Mexico is the cumbersome requirement that each copy of an infringing game disc be accompanied in prosecution files by a copy of a legitimate original for comparative examination by *peritos* (experts). Under this system, when the comparison involves multiple copies of the same infringing video game, rights holders must submit an equal number of legitimate video game copies for the *peritos* to compare to the infringing copies. ESA encourages Mexican IP enforcement authorities to create a reference library of legitimate originals so that multiple copies of the same infringing video game can be compared to a single legitimate copy. Additionally, we recommend requesting that the prosecutors (*Ministerios Públicos*) and the experts (*peritos*) be able to conduct inspections of the online records of the U.S. Copyright Office (available at www.copyright.gov) in order to validate that video games are duly registered, according to existing case law, and that judges accord such inspections with the fullest probative weight permitted under Mexican procedural laws. Currently,

In Mexico, hard goods piracy continues at large open-air markets and shopping complexes that remain the most significant sources of infringing video game-related products. Lately, consoles that resemble arcade controllers and are pre-loaded with pirated copies of video games have become more common. It should be noted that a large volume of importations of counterfeit consoles with preloaded, illegal reproductions of video games has been identified in the ports of Manzanillo and Lazaro Cárdenas. These consoles are manufactured in and exported from China, and are sold in illegal markets, as well as in mainstream online marketplaces. Also, illegal circumvention devices remain of great concern across a range of industries, including the video game industry, and there persists a significant lack of enforcement efforts to protect intellectual property rights in these locations. As infringing products are often stored in small storage lockers and other physical premises within these markets, ESA supports the use of enforcement measures, such as asset forfeiture, that target not only vendors, but also the owners of these storage locations who profit from the sale of counterfeit goods.

Plaza Meave (Mexico City). Plaza Meave is located in the historic center of Mexico City and is considered the main marketplace for video games and related items, both legal and illegal. In its three floors and more than 250 vendors, this market receives an approximate average of 50,000 to 70,000 visitors weekly after the pandemic. Even during COVID-19 pandemic access restrictions, activities in this market remained consistent, including the continued sales of circumvention devices and console modifications.

Plaza de la Computación (Mexico City). A popular market within the nation's capital, Plaza de la Computación offers video game and game console circumvention services and modification devices, as well as pirated copies of video game copies, consoles, and other video game accessories. The market consists of three levels and approximately 250 vendors, some of those vendors offer the installation of circumvention devices and other infringing video game products; however, those activities are not carried out openly.

Tepito (Mexico City). Tepito is an open-air market, 80 square blocks in size in the middle of Mexico City. Despite the decrease in the sale of infringing physical goods due to the rise in electronic downloads, the Florida Street section in Tepito continues to be the main point of active trafficking of pirated copies of video games, modified consoles (*i.e.*, consoles with circumvention devices pre-installed), and circumvention devices. Tepito remains a dangerous spot in Mexico City, hindering enforcement efforts in the area.

Mercado San Juan de Dios (Guadalajara). Mercado San Juan de Dios is the largest marketplace in Latin America, and its notoriety attracts a significant number of visitors, domestic and foreign alike. In 2012, the San Juan de Dios market entered the list of the biggest piracy markets in the world, and despite the loss of some foot traffic related to the COVID-19 pandemic, the market has retained its position to date. There is a large section of the market where pirated copies of newly released video games and films are offered, comprising more than one-third of this market's approximately 3,000 vendors.

prosecutors and judges require rights holders to submit certified copies of U.S. copyright registrations (“Additional Certificate”) and have them apostilled by the U.S. State Department. The time and expense of obtaining Additional Certificates from the U.S. Copyright Office in person and then having the State Department apostille the documents could be easily alleviated by allowing the *peritos* to inspect and verify the online copyright registration records for video games maintained by the U.S. Copyright Office.

Frikiplaza (Mexico City). Dedicated to specialized pop-culture paraphernalia, Frikiplaza consists of various floors stocked with pirated video games and other legitimate and illegitimate collectible items. It is well-known as a location where vendors will openly offer to “hack” video game consoles through the installation of circumvention devices and video game console modification devices. In addition, the selling of arcade and retro-inspired consoles preloaded with pirated copies of video games has recently become a growing problem at this market. This market continues to receive an approximate average of 15,000 to 20,000 visitors weekly post-pandemic.

Brazil

In Brazil, increasing inflation and decreasing purchase capacity exacerbated by the Covid-19 pandemic pushed workers and consumers to the informal market. This informal economy was quick to re-open as pandemic-related restrictions in Brazil began to ease in late 2021 into early 2022. These economic conditions impacted the video game industry, causing an increase in illegal products and services at physical shops.

Galeria Pagé Centro (São Paulo). This multi-story shopping complex located in the center of São Paulo allegedly received 1 million monthly visitors so far in 2022, focuses on offering electronic goods, toys, and fashion accessories. Of the 170 vendors in the complex, approximately 40 shops offer electronics including video game-related products. Approximately 20 of those shops are offering infringing video games. Five stores sell game circumvention devices (ranging from USD 5.00 to USD 300.00), and modified consoles.

Galeria Pagé Brás (São Paulo). This shopping complex opened on March 14, 2022, in the neighborhood of Brás, which is known for its informal markets for clothes and appliances. This modern mall facility has updated infrastructure and more spacious stores. Of the 388 shops in the complex, 28 are focused on electronics, including game hardware, with another 8 solely dedicated to video game products. A majority of those offer multiple retro game consoles pre-loaded with pirated video game titles.

Santa Efigênia (São Paulo). Covering eight blocks in downtown São Paulo, this popular market offers a wide variety of electronic goods typically at lower prices than regular shops. On the main street of Santa Efigenia, there are approximately 350 shops and outlets, with another 500 shops in the surrounding areas and galleries. Of these, it is estimated that over 76 shops are dedicated solely to offering video game-related products. These shops continue to offer infringing video game titles, game circumvention devices, console modification services, and modified video game consoles, often at lower prices than legitimate shops.

Rua Uruguaiana (Rio de Janeiro). As one of the most infamous outlet areas to buy counterfeit goods in downtown Rio de Janeiro, Rua Uruguaiana has over 151 registered stores and booths, with 33 exclusively offering video game products and services. This includes infringing video games, game circumvention devices, and modified consoles.

Oiapoque Outlet (Belo Horizonte, state of Minas Gerais). Also known as ShoppingOi, this market is in downtown Belo Horizonte, with three floors of outlet shops dedicated to a wide variety of products, mostly illegal goods. Among the 900 active shops, 74 are actively selling video-game related products, including illegal consoles pre-loaded with pirated video games.

ESA would like to underscore our appreciation to the U.S. government officials who: (1) drive and administer the review of notorious markets; (2) implement and coordinate the use of policy tools that enhance intellectual property protection and enforcement domestically and overseas; and (3) encourage foreign government officials to investigate reports of piracy and counterfeiting and bring relevant enforcement actions. The resulting Notorious Markets List provides important insights that allow national and local policymakers, as well as law enforcement officials, in other countries to evaluate and fairly demand accountability from these markets and the services that support them, including through appropriate enforcement actions.

Should the Office of the United States Trade Representative have any questions or comments concerning ESA's response, please contact Jason Jeffreys at (202) 903-2353 or JJeffreys@theesa.com.

Sincerely,

A handwritten signature in black ink that reads "Jason Jeffreys". The signature is written in a cursive, flowing style.

Jason Jeffreys
Senior Counsel, Intellectual Property Protection
and Security